Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In the Matter of

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| Policy and Rules Concerning the Interstate Interexchange Marketplace | ) | CC Docket No. 96-61 |
| Implementation of Section 254(g) of the Communications Act of 1934, as amended | ) | |

# COMMENTS OF BELL ATLANTIC MOBILE, INC.

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Bell Atlantic Mobile, Inc. (BAM), hereby submits its comments on the Commission's Further Notice of Proposed Rulemaking in this proceeding, FCC 99-43 (released April 21, 1999). The Further NPRM is all about how to control prices in one of the most competitive sectors of the communications industry. It attempts to apply rate regulation in the form of "rate integration" to commercial mobile radio services, an effort that should not have been undertaken. If the Commission proceeds, it should adopt rules that minimize the market distortions that CMRS price regulation will cause.

## SUMMARY

***1. The Commission Should Take No More Action Until Its Authority to Impose Rate Integration Is Upheld.*** "First, do no harm" is a canon that should apply to regulators, not just physicians. The Further NPRM, however, takes the Commission down a path that can only harm the competitive paradigm that both it

and Congress have declared is to govern the oversight of CMRS. Having wrongly decided that it should enforce rate integration against CMRS providers, the Commission has now embarked on determining how to do so. Worse, instead of acknowledging that it must justify any new rules by evidence as to why they are needed and are the least intrusive necessary, it requires carriers to show why new rules are not needed. This approach misapplies statutory forbearance, a process intended to deregulate, by transforming it into a pretext for imposing requirements.

It is regrettable that the Commission is devoting its scarce resources to this effort at all, instead of completing proceedings that are vital to promoting wireless-landline convergence and other pro-competitive goals. Attempting to control wireless prices can only undermine those goals.

Fundamental legal issues as to whether the Commission properly applied Section 254(g) and Section 10 in this proceeding are awaiting resolution in court. How those issues are resolved will determine the Commission's authority to proceed with this rulemaking. In addition, there is no evidence of any harm resulting from the current partial stay of CMRS rate integration. To the contrary, since the stay was granted, the Commission has pointed to the benefits to consumers that reduced CMRS regulation has brought. Given these facts, there is no basis to consider imposing any rules at this time.

***2. A simple, minimal rule is the most the Commission should adopt.*** If the Commission decides to go ahead, even while its underlying authority to do so is under challenge, it should adopt the following simple rule: A CMRS provider which

offers at least one integrated rate plan to all its subscribers, or enables subscribers to place long distance calls with an IXC, complies with Section 254(g). The Commission's stated goal is to ensure that CMRS subscribers are able to obtain integrated rates for certain calls. In either of these cases, they can do so, either from the CMRS provider or from an IXC, which must itself offer integrated rates under Section 254(g). Adopting this principle will achieve the goal of rate integration, without taking the Commission into the problematic task of regulating wireless prices. If at a later date, evidence comes to the Commission's attention that shows more intrusive rules are needed, it can of course act at that time.

***3. Any more detailed rules must be narrowly drawn to avoid disrupting pro-consumer and pro-competitive offerings.*** The Commission already knows that it cannot simply graft landline integration concepts onto the very different wireless industry because, among other reasons, wireless does not price service based on an "exchange" or "interexchange" basis. Attempting to regulate all wireless offerings would be unlawful as well as infeasible. While BAM opposes more detailed rules, if the Commission decides to take that course, it should conclude that:

- ***Rate integration should not apply to wide area rate plans.*** These plans by definition do not involve any separately stated long distance price and thus are not subject to Section 254(g). The record also already shows that these plans benefit in particular the residents of remote and offshore states who are the intended beneficiaries of rate integration. Regulating them, however, will only discourage carriers from offering them.

- ***Different entities licensed to provide wireless service should not be required to integrate rates unless they are commonly owned***

***and operated.*** This approach will avoid the only reason the Commission has advanced as to why affiliates must integrate their rates – to prevent a single carrier from establishing separate entities in order to avoid rate integration – without causing the anti-competitive harms of applying the current affiliate rule.

- ***Neither airtime charges nor roaming rates should not be forcibly integrated.*** Airtime rates are driven by local competitive conditions, and competition should not be distorted by government fiat as to what is and is not an "interexchange" wireless call. That concept also is irrelevant to wireless because carriers do not design their offerings to match exchanges. A definition of which airtime charges are to be integrated will be necessarily arbitrary and will force carriers to respond to regulation, not market forces. Roaming rates are based on carrier-to-carrier negotiation. Forcing their integration would take the Commission into policing inter-carrier pricing, without reason.

- ***Rates for cellular and PCS should not be forcibly integrated.*** PCS has succeeded in large part based on its ability to differentiate its offerings from cellular. Requiring PCS systems to integrate rates with the rates of commonly-owned cellular systems will undercut the very competition that the Commission has spent years attempting to foster.

## I. THE COMMISSION SHOULD NOT BE ATTEMPTING TO IMPLEMENT AN UNLAWFUL REQUIREMENT.

The Further NPRM takes the Commission down a road it should not be traveling at all. In earlier actions in this docket,[1] it held that the rate integration provision of the Communications Act, Section 254(g), applied to providers of commercial mobile radio services, and separately refused to forbear under Section

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[1] Policy and Rules Concerning the Interstate Interexchange Marketplace, CC Docket No. 96-61, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11812 (1997); Order, 12 FCC Rcd 15739 (1997); Memorandum Opinion and Order, FCC 98-347 (released December 31, 1998).

10 of the Act from enforcing that provision against CMRS providers. Both findings were unlawful. The history of rate integration and its codification in Section 254(g) show that this provision does not extend to CMRS. And, the record showed why CMRS rate integration not only fails to serve subscribers but can harm them, by distorting a competitive market and by constraining carriers from pricing their offerings to meet competitive pressures and subscriber demands. No one, not even the few parties who want rate integration extended to CMRS,[2] argues that it is pro-competitive. Even were the Commission uncertain as to whether Section 254(g) applied,[3] Section 10's forbearance requirement mandated forbearance.[4]

For these and other reasons, the Commission's actions have been appealed.[5] But without waiting for these basic questions of statutory interpretation to be resolved in court, the Commission has embarked on attempting to fit the proverbial square peg in a round hole by grafting the landline-based concept of rate integration

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2 Although the Commission was solicitous of the views of two states, none of the other 48 states endorsed the application of rate integration to CMRS.

3 As Commissioner Powell has documented, the Commission adopted opposite and inconsistent approaches to interpreting Section 254(g). In one decision it found that the provision's "plain language" required CMRS rate integration, but in another it conversely found the that same language to be "ambiguous." Memorandum Opinion and Order, Dissenting Statement of Commissioner Powell, January 29, 1999, at 2. This too will be addressed in the appeals.

4 Commissioner Powell expressed his "real concern that failure to forbear may actually undermine the goals and objectives embodied in Section 254(g) and the Telecom Act generally." Dissenting Statement at 7.

5 Cellular Telecommunications Industry Ass'n, et al. v. FCC, No. 99-1045 (D.C. Cir.), appeal pending.

onto the wireless industry. The more it attempts to apply rate regulation to the proliferating variety of wireless offerings, the more it will disrupt those offerings and intrude on a market which has yielded tangible benefits to consumers. Rate integration (which is another name for rate regulation) is irretrievably at odds with market-based pricing and competition.

The Commission conceded these problems in granting a partial stay of CMRS rate integration in October 1997. Since that time, no evidence has surfaced that the partial stay has resulted in harm to the public. No party has asked that the stay be lifted. In fact, since the stay was issued, the Commission has continued to tout the public interest benefits flowing from CMRS offerings, particularly the growing number of wide area bundled rate plans – yet now it has begun the complex (and inconsistent) effort to disaggregate and regulate the pricing of those plans.[6]

Given that basic issues are pending in court that will address the Commission's application of Sections 254(g) and 10 in this proceeding and thus its legal authority to impose any rules at all, the lack of any demonstrable need to act now, and the market distortions that requirements for pricing CMRS services will cause, the proper course is to await conclusion of the litigation.

Deferring further action at this time is particularly warranted because the Further NPRM itself is seriously flawed. It sets up an analytical process which

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6 See Remarks by Chairman Kennard to the National Association of State Utility Consumer Advocates, February 9, 1998; Remarks of Commissioner Ness to the Economic Strategy Conference, March 3, 1998; Third Annual Report on CMRS Competition, FCC 98-81 (released June 11, 1998).

fundamentally misconceives statutory forbearance. Congress enacted Section 10 as a mechanism to exempt classes of carriers from provisions of the Act that were not needed to protect consumers against unlawful practices. Forbearance was also to apply to pre-existing Commission rules, and required repeal when the three prongs set out in Section 10 were met. In short, forbearance was a way to remove statutory or regulatory requirements which were no longer necessary.

In this proceeding, as in other rulemakings, the Commission is considering imposing requirements. It must establish a record showing that these requirements are necessary to achieve a particular objective. The burden of imposing rules on CMRS providers is particularly high, given Congress's deregulatory mandate for CMRS in the 1993 Budget Act. The Commission declared that it would fulfill that mandate by imposing rules only where clearly necessary, and then as narrowly as possible. It expressly based that policy on Congress's paradigm for CMRS, which relied on market forces, not regulation, to promote the public interest: "Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation or which the Commission and the states could demonstrate a clear-cut need."[7]

The Further NPRM, however, ignores this paradigm. It does not even pay lip service to the federal deregulatory policy for CMRS, and instead turns forbearance

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7 Petition of the Connecticut Dept. of Public Utility Control, 10 FCC Rcd 7025, 7031 (1995), aff'd, Connecticut Dept. of Public Utility Control v. FCC, 78 F.3d 842 (2d Cir. 1996).

on its head. Rather than acknowledge that it must develop a compelling record before it can impose requirements on CMRS, it shifts the burden to the industry, requesting CMRS providers to prove that the forbearance tests are met in order to escape new regulation. The Further NPRM thus warns that rate integration may be imposed on certain CMRS rates unless CMRS providers can prove that that the three forbearance prongs are met, and requests "comment on whether conditions in the CMRS market warrant forbearance" from these new obligations. Id. at ¶ 24..

The obvious impact of this reversal of the forbearance process is that carriers are being forced to establish a Section 10 case to avoid new rules in the first place. The perverse (and unlawful) result is that a provision designed to deregulate is being misapplied as a pretext for imposing requirements. This approach absolves the Commission of having to discharge its own duty to develop a factual record showing that rules are actually needed.[8] It presages an order which applies rate integration to certain CMRS practices because the CMRS industry failed to show "how each element of the forbearance test is met." Id. at ¶ 24. This result would use the forbearance process to impose, not remove rules, in violation of Section 10.

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[8] Commissioner Powell has raised these and other objections to the Commission's approach to forbearance here and elsewhere. He has warned that the forbearance analysis in another CMRS proceeding would impose unjustified rules "based on speculative fears and outdated rationales that raise the bar so high that future and pending forbearance petitions – even in the most competitive segment of the telecommunications industry and in geographic markets that are fully competitive – do not seem to stand a chance." PCIA Broadband Personal Communications Service Alliance's Petition for Forbearance, FCC 98-134, Separate Statement of Commissioner Powell, Dissenting in Part, July 2, 1998.

The Further NPRM should have placed the burden on the Commission and those who want CMRS rate regulation to establish a record that proves why any rules are necessary at all. Instead it improperly shifts the burden to the industry to show why rules are not needed. Failing to acknowledge the obvious conflict with many other Commission positions on CMRS does not make the conflict go away.

If facts come to light that suggest that specific action against the CMRS industry is necessary to achieve the goals of rate integration, the Commission has the authority to do so at that future time. But there is no reason to devote resources to the complex work needed to build a record for adopting detailed rules now, particularly when so many other proceedings that will directly promote the Commission's policy interest goals for CMRS need to be addressed and decided.[9]

## II. CMRS PROVIDERS WHICH OFFER AT LEAST ONE INTEGRATED RATE PLAN OR ENABLE CUSTOMERS TO OBTAIN LONG DISTANCE SERVICE THROUGH AN IXC COMPLY WITH SECTION 254(G).

The timetable set by the Further NPRM leaves CMRS providers with no choice, however, but to respond to what Commissioner Powell has criticized as the overly narrow questions raised as to how rate integration is to be applied. BAM

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9 For example, the Commission began a proceeding almost three years ago to decide whether CMRS providers who also offered fixed services would be subject to minimal CMRS regulation of those services. Even though such minimal regulation would clearly help achieve the Commission's wireless-landline convergence goals, the proceeding has languished. Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, 11 FCC Rcd 8965 (1996).

recommends a simple approach that will ensure that subscribers are able to obtain integrated long distance rates, while avoiding the intrusion into the competitive market that would result from attempting to craft detailed rules.[10] It will solve the dilemma that the Commission has created for itself in trying to shoehorn landline rate integration onto CMRS. The Commission should adopt the following principle: A wireless provider which makes available to all its subscribers at least one integrated rate plan, or which enables customers to access an IXC's integrated rates, complies with Section 254(g). In both situations, the provision's goals are met, and detailed regulation is unnecessary

Many wireless carriers today offer a wide menu of different rate plans to their subscribers. These plans are designed to compete for subscribers with different needs for mobile service: some are high-volume users, others use service infrequently; some travel often; others make mostly local calls. Many carriers offer at least one rate plan among this menu of choices which sets a "long distance" rate that is the same for all customers in all markets served by that carrier. This plan thus clearly offers integrated rates. Many other carriers, whether or not they offer such a plan themselves, allow subscribers to place their "long distance" calls using a landline interexchange carrier such as AT&T, MCI or Sprint. The subscriber can reach the IXC by dialing a particular number or in other ways. The interstate

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10 In commenting on particular ways in which rate integration may apply to CMRS, BAM of course does not waive its position that requiring wireless carriers to integrate their rates misapplies and violates both Sections 254(g) and 10 of the Act.

interexchange rates of IXCs have long been integrated and must continue to be integrated under Section 254(g).

In both of these situations, the goal of rate integration is achieved. Wireless subscribers can obtain integrated rates for their long distance calls, either from the wireless carrier itself or from an IXC. As long as either alternative is available to all of the carrier's subscribers, no subscriber in one state served by that wireless carrier would be denied access to the same rates for comparable long-distance calls that other subscribers in a different state can obtain. The Commission should thus hold that a wireless carrier which offers its subscribers integrated rates in either of these ways complies with Section 254(g). Nothing in Section 254(g) requires that all of a carrier's rates be integrated, nor has the Commission required them to be in its landline integration policy. The goal is to make integrated rates available, and this solution would do so. It will also avoid the need to hammer out detailed, complex rules governing how wireless carriers are to integrate rates.[11]

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11 The Commission recognizes that these alternatives may meet the goals of rate integration, but discusses them only in the context of wide area rate plans. It asks "whether the existence of a basic plan with separate interexchange charges at integrated rates, or the availability of dial-around to reach a long-distance carriers with integrated rates, would warrant either minimal regulation of, or forbearance from regulating, wide-area calling plans pursuant to section 254(g)." Further NPRM at ¶ 15. The Commission should expand its consideration of these alternatives into a complete solution to applying Section 254(g) to the CMRS industry.

## III. IF THE COMMISSION CONSIDERS DETAILED RULES, THEY SHOULD BE NARROWLY WRITTEN TO MINIMIZE THE DISTORTIONS THAT PRICE REGULATION WILL CAUSE TO A COMPETITIVE MARKET.

The Further NPRM unfortunately asks dozens of questions about the way in which rate integration should be imposed on CMRS, which reveal how problematic this effort is. They also presume, incorrectly, that prices for something called "interstate interexchange" wireless service can and should be defined and regulated. If the Commission nonetheless proceeds to develop specific rules, it must craft them narrowly to regulate only to the extent the record demonstrates the need to do so, and in a way that minimizes the adverse impact of such price regulation.

### A. Wide Area Calling Plans Should Not Be Subject to Rate Integration.

The Commission first asks whether to apply rate integration to "wide area calling plans," which it defines as plans which do not impose separate roaming or long distance charges for calls throughout the designated intrastate or interstate area. Further NPRM at ¶¶ 9-17. It should not. Doing so would be unlawful, unworkable, and counterproductive in that it would discourage the very types of bundled rate plans that today benefit residents of remote states.

First, Section 254(g) expressly applies only to "interstate interexchange telecommunications services." This limitation should have led the Commission to reject application of the section to CMRS, because the Commission has repeatedly

held that CMRS providers do not offer interexchange services.[12] Even if, however, the Commission could have lawfully reversed its interpretation of the term in this proceeding, wide area plans would still not be covered. The Commission has defined "interexchange service" to mean "toll service."[13] Section 3(48) of the Act defines telephone toll service as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." By definition, wide area plans do not include a separate charge and thus cannot be treated as "interexchange service."

Second, as the Commission has acknowledged, attempting to integrate the "interexchange" portion of wide area calling plan rates would force the Commission into the complex task of specifying how carriers are to break down those rates into "interexchange" and "other" components. This would be pointless as well as impractical. The record fully documents the fact that wireless carriers do not price service that is defined or bounded by telephone exchanges, but by using areas that are set by competitive considerations. (See discussion at Section C, infra at 18-20). Competition drives the determination of the geography within which wide area rate

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12 The Commission's unexplained reversal in deciding that CMRS providers offer interexchange services is one of the matters pending in the court appeal. Indeed, in later rulings in this same docket, the Commission has reversed itself again, further revealing the arbitrariness of its aberrant decision in finding that CMRS carriers are interexchange carriers for purposes of applying Section 254(g).

13 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15598 (1996) (subsequently omitted).

plans are available, and many carriers are expanding these areas to respond to competitive pressures and customer demands – as they should. Moreover, the competitive rationale for these rate plans is that they will attract customers by offering one, bundled charge regardless of where the call terminates within the defined area. There is no segregable "interexchange" charge.

Third, extending rate integration to wide area calling plans would harm subscribers, particularly those that rate integration was designed to serve. These plans are pro-competitive and benefit the public by helping to decrease the costs of mobile communications. They have enabled subscribers to make long distance calls at rates that are often below the price of a similar landline call. The record shows that AT&T Wireless, BAM and other carriers are offering a steadily-growing range of national and regional wide-area calling plans that offer low, bundled rates to all of their subscribers wherever they live.[14]

If CMRS carriers were forced to disaggregate wide area calling plan pricing and then integrate the "interexchange" portion (whatever that is), they would have

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14 BAM has already placed in the record facts showing the pro-consumer benefits of bundled wireless service plans and why these plans benefit the very people the Commission now asserts would be benefited by crafting rate integration rules. This information also shows how wireless pricing is achieving the goals of rate integration and why attempting to regulate that pricing would undercut those goals. Given that the market is itself achieving the objectives of the proposed regulation, there is no reason (and no lawful basis) for the Commission to intervene. Letter to Chairman William E. Kennard from S. Mark Tuller, Vice President, Bell Atlantic Mobile and Declaration of Jack Plating, Chief Operating Officer, Bell Atlantic Mobile, November 11, 1998.

less incentive to offer these plans. Subjecting these plans to integration would discourage them from being offered, undercutting the benefits they bring. This would particularly injure residents of more remote states. The record shows that these residents enjoy the greatest benefits from these bundled rate plans. Unlike landline services, where these residents pay toll charges on a distance-sensitive basis, CMRS carriers' bundled plans allow them to make long distance calls to destinations across large areas, even across the country, at prices no higher than they would pay for shorter-distance calls. The disparity with distance-sensitive landline rates makes these wireless wide area calling plans particularly attractive to the very residents that rate integration seeks to help.[15] The Commission should be encouraging these plans, not suppressing them.

### B. Different Entities Should Not Have to Integrate Their Rates Unless They Are Commonly Owned and Operated.

The existing rate integration rule, 47 CFR § 64.1801, requires a "provider" of interstate interexchange service to integrate rates for that service. The Commission has defined "provider" to include a carrier and all "affiliates," referencing the broad definition of "affiliate" in 47 CFR § 32.9000, but has stayed the application of this definition to the integration of rates for interstate interexchange CMRS.[16] It asks for comment on alternative approaches that will address its concern that carriers

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15 Plating Declaration, supra n. 14, at 2-6.

16 Memorandum Opinion and Order, at ¶ 3.

may try to evade rate integration by establishing separate entities, but not cause anti-competitive results and undercut the shared ownership arrangements common to the CMRS industry. Further NPRM at ¶¶ 18-24.

The two alternatives suggested would not, however, achieve the identified objectives. The Commission first offers an affiliate definition that would be set at "fifty-one percent or greater ownership control." This test, however, would in nearly all cases be indistinguishable from the current rule and carries the same harms. There is already an extensive record that shows why the current "affiliate" definition would be anti-competitive as well as simply unworkable. And this test would not avoid the obviously anti-competitive result of forcing CMRS providers composed of entities that compete in different markets to agree on the same prices for certain traffic.

The alternative test, "eighty percent ownership control resulting in accounting on a consolidated basis," also does not solve the problem. There are many wireless licensees in which one company may hold an ownership interest of eighty percent or more, but share ownership with entirely independent companies. Forcing these licensees to integrate rates with wireless businesses that are operated by the majority owner goes well beyond the identified problem that one entity will set up separate entities itself to avoid rate integration. And there is no explanation as to why the Commission thinks eighty percent is an appropriate "cutoff" for applying Section 254(g). Any such cutoff would also require complex rules to deal with the variety of complex ownership structures in the industry; for example, the

many partnerships where different owners may have different equity ownership interests and management responsibilities.

BAM recommends that "affiliate" instead be defined for purposes of CMRS rate integration to mean entities that are wholly owned and jointly operated by a single provider. This would address the only concern that has been raised, "to preclude CMRS providers from evading the rate integration requirement of section 254(g) by the simple process of creating separate, affiliated companies to serve different geographic areas." Further NPRM at ¶ 23. Under this rule, a CMRS provider would have no incentive to set up such separate entities to avoid the rule because those entities would still have to integrate their rates. But this rule would avoid the serious problems that the record identifies (and that no party disputes) in requiring entities with two or more independent owners to agree on prices for certain offerings.

The structure of shared ownership that characterizes much of the CMRS industry was, as the record already shows, the result of the Commission's own licensing rules, which promoted multi-party applicants for wireless licenses. Given that there was no indication that rate integration would apply to CMRS until the Commission first said so in 1997, those ownership arrangements were clearly not set up to evade rate integration. A minimal rule is all that is necessary and, on these facts, the most that can lawfully be justified. If the Commission finds in the future that developments might warrant more intrusive regulation, it can always consider doing so at that time.

### C. Rate Integration Should Not Apply to Local Airtime Rates or to Roaming Charges.

In addition to wide-area calling plans that involve "bundled" or "single" rates, many CMRS providers offer plans with separately stated airtime and long distance rates or, for some calls that originate outside the carrier's licensed area, roaming charges. The Commission asks how to apply rate integration to such airtime and roaming charges when they are assessed for an "interstate interexchange" call. Further NPRM at ¶¶ 25-31. This issue was answered by the facts and legal arguments that CMRS providers previously submitted in this proceeding. Local airtime and roaming charges should not be subject to rate integration.

**Airtime.** Landline rate integration has never attempted to regulate the price of local calls, only the price of calls placed with interexchange carriers. Here, however, the Commission asks whether it should impose even more intrusive price regulation on wireless than landline, by regulating wireless "local" airtime rates as well as separately stated rates for "long distance."

The mere possibility that the Commission would attempt to control pricing for local wireless calls, simply because they might cross telephone exchange or other government-set boundaries such as MTAs, shows how far the Further NPRM strays from a measured approach to new regulation. The attempt is also built on the false presumption that the Commission can somehow transplant the "interstate interexchange" language of Section 254(g) to CMRS. But wireless carriers do not offer or price their services based on whether calls transcend telephone exchanges.

Thus when the Commission tries to draw a line between what is and is not an "interexchange" wireless call, it is drawing a line right through a carrier's integrated service area, exposing one of the obvious legal infirmities in attempting to graft a landline policy onto wireless.

Competition, not regulation, must drive how wireless calls are priced. It is the carrier which decides what is and is not a "local" call in response to the competitive wireless marketplace. As the Commission knows, wireless carriers continually attempt to differentiate themselves in order to attract new customers and to retain existing ones. Defining a unique "local" or "home" service area is one of many competitive responses. A provider will expand or change local areas to distinguish its brand and attract new customers. Thus in each market, each carrier is likely to have a different "local" calling area that area may frequently change.

Moreover, the same carrier which has systems in different markets will define "local" differently in different markets; while some areas may be relatively small, others will be much larger. This area extends far beyond a the relatively small single telephone exchange, often encompasses large areas in multiple states, and can even be nationwide. If the Commission were to draw a line around some predetermined geographic zone and rule that airtime charges for "local" calls that terminate outside that zone must be integrated, carriers would be forced to adjust to regulation, not the marketplace. They would be driven to make their offerings more alike, not differentiate them. This is counter to well-established economic principles as to the benefits of product differentiation, and is precisely the type of

government intrusion into CMRS that Congress and the Commission have said should not occur.[17]

Even the Commission's use of Major Trading Areas to define an "exchange" for purposes of rate integration does not fit the "local" areas of wireless providers. BAM, as a cellular carrier, is not licensed to serve areas that bear any resemblance to MTAs; instead it serves areas whose boundaries do not coincide with MTA boundaries. It is clearly arbitrary and thus unlawful to force BAM to integrate the rates of calls that happen to cross an imaginary line that has no competitive or other regulatory significance to its business. Even PCS carriers do not limit calling areas based on MTAs but frequently define those areas to include parts of different MTAs.

The solution should be plain: Airtime charges (as opposed to separately stated long distance charges) may not be forcibly integrated. They apply by definition to whatever the carrier has determined should be local calls. This solution would not preclude the Commission from requiring that CMRS providers' separately stated rates for the long distance portion of an interstate call would need to be integrated, if it believes that action is necessary to implement Section 254(g).

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17 Petition of the Connecticut Dept. of Public Utility Control, supra n. 7, at 7031: "Congress intended to promote rapid deployment of a wireless telecommunications infrastructure. ... Thus, in implementing the statute, we have attempted to facilitate the achievement of this goal by ensuring that regulation creates positive incentives for efficient investment – rather than burdening entrepreneurial activities." It is hard to conceive of a greater burden (and impairment of the market) than government price regulation.

This will achieve the what the Commission believes is required by Section 254(g) by ensuring that a wireless carrier's subscribers in different states have access to integrated long distance rates.

**Roaming.** Carriers have already explained why roaming cannot lawfully be considered an interexchange service, and have documented the adverse results that would flow from attempting to force CMRS carriers to integrate their roaming rates. Whether roaming charges are imposed and, if so, their amount, are directly affected by carrier-to-carrier roaming agreements, not on whether or not a call is made on an interstate, intrastate, or "interexchange" basis.

Moreover, roaming charges are another way that individual CMRS providers differentiate their offerings in the marketplace. There is thus no rational basis to force a roaming charge that a subscriber pays when he or she calls from one city to be equivalent to the charge paid when calling from a different city. That will be true whether the subscriber makes a local call within each city or makes a "long-distance" call. There is also no plausible way that the Commission could regulate some but not all "roaming" calls. Nor should it, because it would distort carrier-to-carrier negotiations and result in a "leveling" of rates, directly undercutting the consumer benefits of price differentiation. Other CMRS rulemakings documented significant harms from Commission intrusion into pricing agreements among carriers, and it has refused to do so.[18] There is no basis to reverse direction now.

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18 E.g., Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd1411 (1994) (forbearing from enforce-

(continued...)

### D. Cellular and PCS Rates Should Not Be Required To Be Integrated.

The Further NPRM (at ¶¶ 32-33) last seeks comment on whether the rates of cellular and broadband PCS services should be integrated. They should not. Doing so would be an arbitrary departure from prior practice and would impede efforts by PCS to attract cellular customers. Such a ruling would thus frustrate Commission goals for the wireless industry.

First, as the Commission acknowledges, it has not required landline carriers to integrate all of their rates, but has allowed distinctions among "classes" of rates for 800 calls, WATS and other services. The distinction between cellular and broadband PCS is even greater, because these two services are authorized and licensed under separate rules, use separate radio spectrum, and operate in distinct geographic licensing areas.[19] Given that the Commission has allowed landline carriers to divide their services into different classes and not integrate rates across

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(...continued)

ment of Section 211 of the Act; "Competitive market forces will ensure that inter-carrier contracts will not be used to harm consumers."). In response to a Commission inquiry into CMRS roaming, the record documented numerous harms that would result from government intrusion into roaming agreements. Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996).

19 Cellular systems are licensed under Part 22 of the Rules to operate in the 900 MHz band in "Metropolitan Statistical Areas" and "Rural Service Areas." Broadband PCS systems are licensed under Part 24 to operate in the 1900 MHz band in "Major Trading Areas" and "Basic Trading Areas," a completely different pattern of licensed service areas.

such classes, it would be arbitrary to force CMRS providers to integrate prices for separately licensed mobile services.

Second, forcing integration of cellular and PCS rates would distort and suppress the competition that PCS is bringing to wireless markets. Many cellular entities have interests in PCS systems which are aggressively seeking to attract customers from other cellular carriers. PCS systems do so by establishing different price plans and differently-defined "local" calling areas (again showing why forcing integrated airtime rates in such areas would be arbitrary and counterproductive). If the new PCS entrant is constrained by having to charge the same rates as its cellular affiliate in a different market, its ability to structure prices and otherwise engage in product differentiation to capture cellular subscribers would be harmed. This would be not only nonsensical but would undermine the Commission goal that PCS provide significant new competition.[20]

Third, many of the affiliate issues identified in the record involve joint ventures by cellular providers to offer PCS. Deciding that cellular-PCS rate integration is not required would address some (although not all) of the anti-competitive results of attempting to force integration across affiliated entities.

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[20] BAM agrees with one party's analysis that "If the Commission requires the PCS carrier to be rate-integrated with its sister cellular carrier in other markets, it will significantly retard the ability of a PCS carrier to enter into competition with incumbent cellular carriers." BellSouth Corporation, Petition for Reconsideration and Forbearance, October 3, 1997, at 24.

## CONCLUSION

The Commission should take no action in this proceeding until its authority to go ahead is resolved. Doing so will only cause harm to the competitive wireless market, without any tangible, countervailing benefit. The Commission has already declared that wireless is the "success story" for its deregulatory efforts. There is no basis in law or logic for it to do an about-face here and attempt to control prices.

Respectfully submitted,

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